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WASHINGTON, D.C.

20006-297 RECORDATION NO. 5361 A Filed 1425

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INTERSTATE COMMERCE COMMISSION

November 2, 1987

7-306A013

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

No.   
Date NOV 2 1987  
Fee \$ 10.00  
ICC Washington, D.C.

NOV 2 10 47 AM '87  
MOTOR OPERATING UNIT  
ICC OFFICE OF  
THE SECRETARY

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are the original and one copy of a Deed of Trust and Security Agreement dated as of October 1, 1987, a primary document as defined in the Commission's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Wheelabrator Energy Leasing Company  
Liberty Lane  
Hampton, New Hampshire 03842

Secured Party: The Connecticut Bank and Trust Company,  
National Association  
One Constitution Plaza  
Hartford, Connecticut 06115

A description of the railroad equipment covered by the enclosed document is:

Three hundred ninety (390) 4,240 cubic foot capacity 100-ton gondola cars manufactured by ACF Industries bearing reporting mark RTPX and numbers 11001 through 11004 and 11100 through 11485, each both inclusive.

*CT. Kappler*  
*Consent*

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
November 2, 1987  
Page Two


Also enclosed is a check in the amount of \$10 payable to the order of the Interstate Commerce Commission covering the required recordation fee

Kindly return a stamped copy of the enclosed document to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed primary document to appear in the Commission's Index is:

Deed of Trust and Security Agreement dated as of October 1, 1987 from Wheelabrator Energy Leasing Company to Mason M. Lemont, Trustee, and The Connecticut Bank and Trust Company, National Association, Trustee, covering 390 gondola cars marked and numbered RTPX 11001 - 11004 and 11100 - 11485.

Very truly yours,

  
Charles T. Kappler

Enclosures

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REGISTRATION NO. \_\_\_\_\_ FILED 1429

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INTERSTATE COMMERCE COMMISSION

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**DEED OF TRUST AND SECURITY AGREEMENT**

**Dated as of October 1, 1987**

**FROM**

**WHEELABRATOR ENERGY LEASING COMPANY**

**TO**

**MASON M. LEMONT, TRUSTEE**

**and**

**THE CONNECTICUT BANK AND TRUST COMPANY,  
NATIONAL ASSOCIATION, TRUSTEE**

---

**This instrument was prepared by:**

**Edward V. Sommer, Esq.  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603**

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#### ATTACHMENTS TO DEED OF TRUST:

- Annex 1 - Definitions
- Exhibit A - Legal Description of Real Property
- Exhibit B - Description of Facility

THIS DEED OF TRUST AND SECURITY AGREEMENT dated as of October 1, 1987 (this "Deed of Trust") from WHEELABRATOR ENERGY LEASING COMPANY, a Delaware corporation (the "Company"), as Trustor, having its principal office at Liberty Lane, Hampton, New Hampshire 03842, to MASON M. LEMONT, an individual (the "Trust Deed Trustee"), as Trustee, whose post office address is One Constitution Plaza, Hartford, Connecticut 06115, and THE CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Trustee (the "Beneficiary"), as beneficiary and secured party, whose post office address is One Constitution Plaza, Hartford, Connecticut 06115. The Trust Deed Trustee and the Beneficiary are sometimes hereinafter collectively referred to as the "Trustees".

R E C I T A L S:

A. Connecticut General Life Insurance Company, Horace Mann Life Insurance Company and Aetna Insurance Company (collectively, the "Purchasers") and the Company have executed and delivered the separate and several Note Purchase Agreements, each dated as of October 1, 1987 (the "Note Purchase Agreements"), providing for the commitment of the Purchasers to purchase the 9.75% Secured Notes, due August 15, 1999 (the "Notes") of the Company in an aggregate principal amount not exceeding \$24,500,000, said Notes to be dated the date of issue, bearing interest from the date of issue until maturity at the rate of 9.75% per annum and at the rate of 11.75% per annum (or such lesser rate as may be the maximum not prohibited by applicable law) on any overdue principal and (to the extent permitted by law) on any overdue interest, to mature in 140 equal monthly installments, including both principal and interest, payable on the fifteenth day of each calendar month, commencing December 15, 1987, to and including July 15, 1999, followed by a final installment payable on August 15, 1999, in an amount equal to the entire principal and interest remaining unpaid thereunder as of said date, and to be otherwise substantially as set forth in Exhibit A to the Trust Indenture hereinafter referred to. An installment of interest accrued on the Notes from the date of issuance thereof shall be due and payable on November 15, 1987.

B. To the extent that this Deed of Trust is also a Security Agreement and Financing Statement under the Uniform Commercial Code of the State of Texas and in compliance therewith, the following information is set forth:

The names and addresses of the debtor and the secured party for purposes of the Uniform Commercial Code are:

Debtor:	Wheelabrator Energy Leasing Company
	Liberty Lane
	Hampton, New Hampshire 03842
	Attention: Chief Financial Officer

**Secured Party:**

The Connecticut Bank and Trust Company,  
National Association, Trustee  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

C. The Notes are issued under and equally and ratably secured as provided in the Trust Indenture dated as of October 1, 1987 (the "*Indenture*") from the Company to the Beneficiary.

D. The Notes and all principal thereof, prepayment premium, if any, and interest thereon, and all additional amounts and other sums at any time due and owing from and required to be paid by the Company under the terms of the Notes, the Note Purchase Agreements, the Indenture, this Deed of Trust or any other mortgage or deed of trust executed and delivered by the Company pursuant to the Note Purchase Agreements and the Indenture are hereinafter sometimes referred to as the "*Subject Indebtedness*".

E. The Company is duly authorized under all applicable provisions of law and its Certificate of Incorporation and By-laws to issue the Notes, to execute and deliver this Deed of Trust and to mortgage, convey and assign the Collateral to the Trustees as security for the Notes, and all corporate action and all consents, approvals and other authorizations and all other acts and things necessary to make this Deed of Trust the valid, binding and legal instrument for the security of the Notes and all other Subject Indebtedness have been done and performed.

F. Unless otherwise defined herein or the context hereof shall otherwise require, the capitalized terms used in this Deed of Trust shall have the respective meanings specified in Annex 1 hereto.

NOW, THEREFORE, THIS DEED OF TRUST WITNESSETH: That the Company, in consideration of the premises, the purchase and acceptance of the Notes by the Purchasers and of the sum of Ten Dollars received by the Company from the Trustees and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, and interest on, the Notes, and to secure the payment of all other Subject Indebtedness and the performance and observance of all the covenants, agreements and conditions contained in the Notes, this Deed of Trust, the Note Purchase Agreements and the Indenture does hereby warrant, mortgage, pledge, assign, bargain, hypothecate, convey, grant, transfer and set over unto the Trust Deed Trustee and his successors in trust and assigns, with POWER OF SALE and right of entry and possession, all and singular the following described properties, rights, interest and privileges and all of the Company's estate, right, title and interest therein, thereto and thereunder (all of which properties hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "*Collateral*") and does further grant a security interest to the Beneficiary, its successors and assigns in all such Collateral in which a security interest can be granted:

### GRANTING CLAUSE FIRST

The real property described in Exhibit A attached hereto and made a part hereof, together with all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed upon such land, including all right, title and interest of the Company, if any, in and to all building equipment and other equipment and fixtures of every kind or nature, now or at anytime hereafter affixed, annexed or attached to such land, buildings, structures or improvements, and the reversion or reversions and remainder or remainders, if any, in and to said land, together with all and singular the tenements, hereditaments, easements, rights-of-way, rights, privileges and appurtenances to said land, belonging or in any wise appertaining thereto, including, without limitation, the entire right, title and interest of the Company in, to and under any permits and franchises, streets, ways, alleys, gores, or strips of land adjoining said land, and all claims or demands whatsoever of the Company either in law or in equity, in and to said land, it being the intention of the parties that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned by the Company, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Deed of Trust, and together with all rents, income, revenues, issues and profits thereof and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, issues and profits and avails arising therefrom or in connection therewith.

### GRANTING CLAUSE SECOND

All buildings, other constructions, structures and improvements, together with all appurtenances thereto, and all fixtures, equipment and personal property used in or about the land described in Exhibit A hereto or the improvements thereon or that are necessary or useful for the complete use and operation thereof, and all heating, sprinkler and electric light systems, boilers, plumbing, electrical switch-gear, duct work, reactors, distribution lines, tracks, tanks and switches and other machinery and equipment used or useful by the Company, whether real property, personal property or mixed, whether such right, title or interest is now owned or hereafter acquired by conveyance, lease, easement or otherwise; it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Company and is affixed or attached or annexed to said real property, shall be and remain or become subject to the lien of this Deed of Trust, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith.



### GRANTING CLAUSE THIRD

The Facility described in Exhibit B hereto, as the same is now and will hereafter be constituted, whether now owned by the Company or hereafter acquired, together with all accessories, equipment, parts and appurtenances appertaining or attached to the Facility and all substitutions, renewals and replacements of and additions, improvements, accessions and accumulations to any and all of said Facility which are now owned or hereafter acquired by the Company, together with all the rents, issues, income, profits and avails thereof, and all rights to receive all insurance proceeds, condemnation awards and other payments with respect to the Facility and all plans and specifications relating to the Facility.

### GRANTING CLAUSE FOURTH

The lessor's interest in, to and under the Facility Lease, and the Operator's interest in, to and under the Facility Agreement, together with all rights, powers, privileges, options and other benefits (but not any of the duties, responsibilities or liabilities) of the Company as lessor under the Facility Lease and as Operator under the Facility Agreement, including, without limitation, the immediate and continuing right to receive and collect all rent, income, revenues, issues, profits, insurance proceeds, condemnation awards and other payments, tenders and security now or hereafter payable to or receivable by the Company under the Facility Lease or the Facility Agreement pursuant thereto (provided, that, so long as no Event of Default shall have occurred and be continuing, all amounts of rent due under the Facility Lease which equal the amounts payable under the Service Agreement or the Conditional Service Agreement, whichever then may be in effect, as Operating and Maintenance Costs (but without giving effect to the credit provided for in the last sentence of Section 6(a) of the Service Agreement and the Conditional Service Agreement) shall not be required to be paid to the Beneficiary), the right to make all waivers and agreements, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Company is or may be entitled to do thereunder. NOTWITHSTANDING ANY PROVISION OF THIS DEED OF TRUST OR ANY OF THE OTHER OPERATIVE DOCUMENTS WHICH MIGHT BE CONSTRUED TO THE CONTRARY, THE FOREGOING ASSIGNMENT OF RENT, INCOME, REVENUES, ISSUES, PROFITS, INSURANCE PROCEEDS, CONDEMNATION AWARDS AND OTHER PAYMENTS AND TENDERS PAYABLE TO OR RECEIVABLE BY THE COMPANY UNDER THE FACILITY LEASE AND THE FACILITY AGREEMENT IS INTENDED TO BE A PRESENT, ABSOLUTE ASSIGNMENT; SUCH ASSIGNMENT IS NOT AN ASSIGNMENT FOR SECURITY PURPOSES ONLY. EFFECTIVE IMMEDIATELY, ALL AMOUNTS OF RENT UNDER THE FACILITY LEASE, EXCEPT AS OTHERWISE PROVIDED ABOVE, SHALL BE PAID BY THE LESSEE UNDER THE FACILITY LEASE DIRECTLY TO THE BENEFICIARY TO BE APPLIED AGAINST THE SUBJECT INDEBTEDNESS.

**GRANTING CLAUSE FIFTH**

All right, title, interest, claims and demands (but not any of the duties, responsibilities or liabilities) of the Company in, to and under

- (1) Section 15 of the Railroad Equipment Lease;
- (2) the Easement Agreement; and
- (3) any and all other contracts and agreements relating to the Facility or any rights or interests therein to which the Company is now or may hereafter be a party;

(the Facility Lease, the Facility Agreement, the Railroad Equipment Lease, the Easement Agreement and each of the contracts and agreements described in clause (3) of this Granting Clause Fifth being hereinafter collectively referred to as the "Assigned Agreements"), together with all rights, powers, privileges, licenses, easements, options and other benefits of the Company under each thereof, including, without limitation, the right to make all waivers and agreements, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of a default thereunder, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted thereby or by law, and to do any and all other things which the Company is or may be entitled to do thereunder.

**GRANTING CLAUSE SIXTH**

Any other moneys and securities held by the Beneficiary under this Deed of Trust.

**GRANTING CLAUSE SEVENTH**

All proceeds of any of the foregoing.

**GRANTING CLAUSE EIGHTH**

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the Company or by anyone in its behalf to the Beneficiary which is hereby authorized to receive the same at any time as additional security hereunder.

SUBJECT, HOWEVER, to Permitted Encumbrances;

TO HAVE AND TO HOLD the Collateral unto the Trust Deed Trustee and, to the extent that a security interest is granted in the Collateral, unto the Beneficiary, and their respective successors in trust and assigns forever for the purpose of providing a means of payment of and securing performance of each agreement, covenant and

warranty of the Company contained herein and payment of the Subject Indebtedness. It is understood and agreed that this Deed of Trust is to provide a means of payment of and secure the obligation of the Company to pay, without preference or priority, the Subject Indebtedness, including, without limitation, all sums due or to become due in respect of the Notes executed and delivered pursuant to the Note Purchase Agreements and the Indenture, including those heretofore executed, those of even date herewith and those to be executed in the future as specified in said Note Purchase Agreements and/or Indenture.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that (a) if the Company performs the covenants herein contained and pays to the Beneficiary, its successors in trust and assigns, the full amount of the Subject Indebtedness, the Beneficiary shall release this Deed of Trust at the Company's expense, and shall execute and deliver to the Company any releases, reconveyances or other instruments reasonably required by the Company to evidence of record such release, and the entirety of the estate, together with all right and interest of the Trustees in the property hereby conveyed, shall cease and this Deed of Trust shall become null and void, but otherwise to remain in full force and effect, and (b) the Beneficiary shall not exercise any of the remedies provided in Section 4.2 hereof, and shall not exercise any of its rights under any of the Assignment Agreements in such a manner as to interfere with the conduct of the business of any of the parties thereto, unless an Event of Default has occurred and is continuing.

It is agreed and understood by the parties hereto that any part of the security herein described, and any security described in any other mortgage or deed of trust or other instrument now or hereafter given to secure the Subject Indebtedness, may be released by the Beneficiary without affecting the lien hereof on the remainder or the obligations of the Company on and in respect of the Notes and any person acquiring any direct or indirect interest in the security herein described or in any security described in any other mortgage or deed of trust or other instrument now or hereafter given to secure the indebtedness which is secured by this Deed of Trust shall take the same subject to all of the provisions hereof.

## **SECTION 1. GENERAL COVENANTS AND WARRANTIES.**

The Company covenants, warrants and agrees as follows:

**1.1. Note Purchase Agreement and Indenture Covenants.** Each and all of the terms, provisions, restrictions, covenants and agreements set forth in the Note Purchase Agreements and the Indenture, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns, are incorporated herein by reference to the same extent as though each and all of said terms, provisions, restrictions, covenants and agreements were fully set out herein and as though any amendment or supplement to the Note Purchase Agreements or the Indenture, as the case may be, were fully set out in an amendment or supplement to this Deed of Trust; and the Company does hereby covenant and agree well and truly to abide by, perform and be governed and restricted by each and all of the matters provided for by the Note Purchase Agreements and the Indenture and so incorporated herein to the same extent

and with the same force and effect as if each and all of said terms, provisions, restrictions, covenants and agreements so incorporated herein by reference were set out and repeated herein at length. No amendment, modification or waiver of, or any action taken or not taken under or pursuant to any of the terms and provisions of the Notes, the Note Purchase Agreements or the Indenture, shall affect or modify any of the terms or provisions of this Deed of Trust or any of the obligations of the Company hereunder, except and to the extent expressly provided for in any such amendment, modification or waiver.

**1.2. Ownership of Collateral.** The Company covenants and warrants that it has good and marketable title to the Collateral hereinbefore conveyed to the Trustees, free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Company has full right, power and authority to convey, transfer and mortgage the same to the Trustees for the uses and purposes in this Deed of Trust set forth; and the Company will warrant and defend the title to the Collateral against all claims and demands whatsoever.

**1.3. Further Assurances; After-Acquired Property.** (a) The Company will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, deeds, conveyances, mortgages, assignments, transfers and assurances as the Trustees reasonably may require for the perfection of the Lien being herein provided for. Without limiting the foregoing, but to provide a means of payment of the Subject Indebtedness, the Company covenants and agrees that it will notify SPS and the Lessee of this Deed of Trust and that it will direct SPS and the Lessee to make all payments of the sums due and to become due under the Facility Agreement and the Facility Lease, respectively, directly to the Beneficiary or as the Beneficiary may direct no later than 11:00 a.m., Hartford, Connecticut time, on or before each date such payments are due; provided, that, so long as no Event of Default shall have occurred and be continuing, all amounts of rent due under the Facility Lease which equal the amounts payable under the Service Agreement or the Conditional Service Agreement, whichever may then be in effect, as Operating and Maintenance Costs (but without giving effect to the credit provided for in the last sentence of Section 6(a) of the Service Agreement and the Conditional Service Agreement) shall not be required to be paid to the Beneficiary.

(b) All right, title and interest of the Company in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Collateral, or any part thereof, hereafter constructed or acquired by the Company, immediately upon such construction or acquisition, and without any further mortgaging, conveyance or assignment, shall become and be part of the Collateral and shall be subject to the Lien of this Deed of Trust as fully and completely and with the same effect as though now owned by the Company, but at any and all times the Company will execute and deliver to the Trustees any and all such further assurances, mortgages, conveyances or assignments thereof and other instruments with respect thereto as the Trustees may reasonably require for the purpose of expressly and specifically subjecting the same to the Lien of this Deed of Trust.

**1.4. Payment of Principal and Interest and Other Amounts.** The Company will duly and punctually pay the principal of, and premium, if any, and interest on all Notes secured hereby according to the terms thereof.

**1.5. Maintenance of Collateral, Other Liens, Compliance with Laws, etc.** Without limiting the provisions of Sections 3.6 or 3.8 of the Indenture and subject to Section 3 hereof, the Company shall, or shall cause the Lessee to, (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter constituting a portion of the Collateral which may become damaged or be destroyed, (ii) keep the Collateral in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances (including, without limitation, liens of mechanics and materialmen) other than Liens permitted under Section 3.9 of the Indenture, (iii) pay when due any indebtedness which may be secured by a lien or charge on the Collateral, and upon request exhibit satisfactory evidence of the discharge of such prior lien to the Trustees, (iv) comply with all requirements of law or municipal ordinances with respect to the Collateral and the use thereof, failure to comply with which would result in any material interference with the use or operation of the Collateral by the Company, and (v) make no material alterations in said Collateral which would impair the market value or usefulness of the Collateral for the purposes for which the same is presently being used, except as required by law or municipal ordinance.

**1.6. Advances.** If the Company shall fail to comply with the covenants contained herein or in the Note Purchase Agreements or the Indenture and incorporated herein by reference with respect to the procuring of insurance, the payment of taxes, assessments and other charges, or the keeping of the Collateral in repair and free of other liens (other than Permitted Encumbrances), the Trustees or either of them may (but shall not be obligated to) make advances to perform the same; and the Company agrees to repay all sums so advanced upon demand with interest at 11.75% per annum after demand (or such lesser rate as may be the maximum not prohibited by applicable law); and all sums so advanced, with interest, shall be secured hereby, but no such advance shall be deemed to relieve the Company from any default hereunder.

**1.7. Maintenance of Lien; Recording; Opinions of Counsel.** (a) The Company will, at its expense, take all necessary action to maintain and preserve the assignment and Lien of this Deed of Trust so long as any principal of or interest on any Notes is outstanding.

(b) The Company will, forthwith after the execution and delivery of this Deed of Trust and thereafter from time to time, cause this Deed of Trust and any related financing statements to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the assignment and Lien hereof in respect of, upon, and the title of the Trustees to, the Collateral; and the Company will cause all re-recording and refiling, including, without limitation, continuation statements required by the Uniform Commercial Code, in respect of this Deed of Trust to be timely filed at the expense of the Company in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the holders of the Notes. From time to time the Company will perform or cause to be performed any other act as provided by law and will execute or cause to be executed any and all further instruments that may be required by law or requested by the Trustees for such protection. To the extent permitted by applicable law, the Company will pay or cause to be paid all filing, registration and recording taxes and fees incident to such filing, registration and recording, and all expenses

incident to the preparation, execution and acknowledgment of this Deed of Trust, and of any instrument of further assurance, and all federal or state stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Deed of Trust and any such instrument of further assurance.

(c) The Company will, at its expense, furnish to the Beneficiary (i) promptly after the execution and delivery of any supplement or amendment to this Deed of Trust, an Opinion of Counsel stating that in the opinion of such counsel, such supplement to this Deed of Trust (or a financing statement, continuation statement or similar notice thereof if and to the extent required by applicable law) has been properly recorded or filed for record in all public offices in which recording or filing is necessary to protect the right, title and interest of the Trustees hereunder to perfect the Lien provided by this Deed of Trust as a valid first Lien in the Collateral, and (ii) within 30 days prior to October 1 in each year beginning in 1988, an Opinion of Counsel stating that this Deed of Trust (or financing statements or similar notices thereof if and to the extent required by applicable law) have been properly recorded or filed for record in all public offices in which such recording or filing is necessary to protect the right, title and interest of the Trustees under this Deed of Trust and to perfect the security interest provided by this Deed of Trust as a valid Lien in the Collateral, and stating the requirements of applicable law with respect to the re-recording or re-filing of this Deed of Trust (or financing statements, continuation statements or similar notices thereof to the extent required by applicable law) prior to October 1 of the succeeding year in order to protect and maintain such Lien of the Trustees.

1.8. *Insurance.* In addition to the requirements set forth in Section 3.7 of the Indenture, the Company will keep the Collateral and all of its insurable property fully insured against all physical loss including by fire, windstorm, explosion and theft and with extended coverage in an amount not less than the full insurable value thereof (i.e., the actual replacement cost, without allowing for depreciation, excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) as determined by an architect, contractor, appraiser, appraisal company or one of the insurers, provided that such insurance shall in any event be in amounts sufficient to prevent the Company from being a co-insurer of any partial loss under the applicable policies. Coverage for flood and earthquake will also be maintained to the extent each is available on commercially reasonable terms and in amounts customarily provided on facilities of similar size, nature and operation. The policies of insurance shall provide that (i) the loss, if any, thereunder shall be payable to the Trustees under a standard mortgagee loss payable clause in form and substance satisfactory to the Beneficiary, and (ii) such policies shall not be cancelled without at least 30 days' prior written notice to the Beneficiary.

## SECTION 2. POSSESSION, USE AND RELEASE OF PROPERTY.

2.1. *Company's Right of Possession.* Provided no Default or Event of Default has occurred and is continuing, the Company shall be suffered and permitted to remain in full and exclusive possession, enjoyment and control of the Collateral (other than all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards and other amounts payable under the Facility Lease or the Facility Agreement),

subject always to the observance and performance of the terms of this Deed of Trust and of the Note Purchase Agreements and the Indenture.

**2.2. Substitutions, Replacements and Alterations.** While the Company is not in default hereunder, the Company may at all times and from time to time without the consent of the Beneficiary, or any release by the Beneficiary:

(a) sell or otherwise dispose of, free from the lien of this Deed of Trust or any supplement, any machinery, equipment or apparatus which may be subject to the lien hereof when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Collateral, upon replacing (provided such replacement is necessary in order to comply with the provisions of Section 1.5 hereof) the same with or substituting for the same other machinery, equipment or apparatus (in such manner as to come under the lien hereof to the same extent as the items for which they are substituted or replaced) of a value and utility at least equal to the value and utility of that so disposed of; and

(b) alter, repair, replace, change the location or position of and add to any machinery, apparatus, equipment, fittings and fixtures or other similar property which may be subject to the lien of this Deed of Trust, *provided*, however, that such alterations, repairs, replacements, changes or additions do not diminish the value thereof, and *provided, further*, that no change shall be made in the location of any such property subject to the lien of this Deed of Trust which would in any respect impair the lien of this Deed of Trust upon such property.

**2.3. Eminent Domain.** Should any of the Collateral be taken by the exercise of the power of eminent domain, the Company may accept any award or consideration stated to be satisfactory to the Company in an Officers' Certificate delivered to the Beneficiary, and the Trustees shall release the property so taken upon being furnished with an opinion of counsel satisfactory to the Beneficiary to the effect that such property has been taken by the exercise of the power of eminent domain. In the event of such proceeding, the Beneficiary may be represented by counsel and the Beneficiary may or may not become a party thereto as the Beneficiary in its discretion may determine. The proceeds of all property so taken shall be paid over to the Beneficiary and shall be held and disbursed or applied upon the terms and conditions provided in the succeeding Section 3 hereof.

**2.4. Actions With Respect to Collateral.** The Company will not without the written consent of the Beneficiary:

(a) terminate, modify, amend or accept a surrender of, or offer or agree to any termination, modification, amendment or surrender of, any Assigned Agreement, or by affirmative act consent to the creation or existence of any Lien (other than the security interest and Lien of this Deed of Trust) to secure the payment of indebtedness upon the Company's right, title and interest under and to the Assigned Agreements, and any attempt to do so shall be void;

(b) receive or collect or permit the receipt or collection of any amounts payable to the Company under any Assigned Agreement prior to the date for payment thereof provided for by such agreement, or assign, transfer or hypothecate (other than to the Beneficiary hereunder) any payment then due or to accrue in the future under any Assigned Agreement; or

(c) sell, mortgage, transfer, pledge, assign or hypothecate (other than to the Beneficiary hereunder) its interest in the Facility or any part thereof or in any amount to be received by it from the use or disposition of the Facility, or its interest under any Assigned Agreement, and any attempt to do so shall be void.

### **SECTION 3. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE BENEFICIARY.**

3.1. *Insurance Proceeds.* All proceeds of any insurance, including, without limitation, fire and extended coverage insurance covering the Collateral received by the Beneficiary under the provisions of this Deed of Trust and/or the Note Purchase Agreements, the Indenture or any instruments supplemental hereto or thereto, or under any policy or policies of insurance covering the Collateral or any part thereof, shall be held by the Beneficiary as part of the Collateral and shall be applied by the Beneficiary, as follows:

(a) If within 60 days after receipt of such proceeds the Company shall have given written notice to the Beneficiary and the holders of the Notes that it intends to repair, replace or restore the Collateral, such proceeds shall be paid to the Company from time to time upon delivery to the Beneficiary of an Officers' Certificate, accompanied by an approving certificate, in form and content acceptable to the Beneficiary, of an independent architect or Engineer selected by the Company and approved by the Beneficiary, for the purpose of paying, or reimbursing the Company for the payment of, the reasonable cost, as shown by such certificate, of repairing or replacing part or all of the property damaged or destroyed, but only if written application is made therefor within six months of the receipt of such proceeds by the Beneficiary, and then only for and to the extent that the Company shows by such architect's or Engineer's certificate or other evidence satisfactory to the Beneficiary that the portion of such proceeds remaining on deposit with the Beneficiary together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Beneficiary for such purpose, shall be sufficient to complete such repairs or replacements and restore the Collateral as nearly as possible to the market value and condition which existed immediately prior to the damage or destruction free from liens or encumbrances except this Deed of Trust and Permitted Encumbrances. Subject to the satisfaction of each of the other conditions contained in this Section 3.1(a), the Company shall not be required to actually pay for any repairs, replacements or restorations to the Collateral prior to being entitled to receive any insurance proceeds hereunder. Every such application for the payment of such insurance moneys shall state that the Company is not in default under any of the terms and provisions of this Deed of Trust and shall be accompanied by an opinion of counsel to the effect that upon completion of the repair or replacement the Property concerned will be subject



to the Lien of this Deed of Trust, which is prior to all other encumbrances other than Permitted Encumbrances.

(b) In the event the insurance moneys shall not have been applied to one or more of the purposes specified in Section 3.1(a) hereof within the six-month period provided for thereby, or if the Company shall not have given notice of its intention to repair, replace or restore the Collateral within 60 days of receipt of such insurance moneys, then the Beneficiary shall apply such insurance moneys to the prepayment of the Notes as provided in Section 5.1 of the Indenture in an amount sufficient to exhaust such cash as nearly as may be upon giving the Company ten days' advance notice of its intent so to do, and any balance remaining after such prepayment shall be released to the Company.

3.2. *Condemnation Awards; Other Proceeds.* Moneys received by the Beneficiary by reason of the exercise of the power of eminent domain with respect to any part of the Collateral, shall be held by the Beneficiary as part of the Collateral and shall be held and disbursed or applied in the same manner and upon the same terms and conditions as provided for in Section 3.1 hereof in respect of insurance proceeds.

#### **SECTION 4. DEFAULTS AND REMEDIES THEREFOR.**

4.1. *Events of Default.* The Company acknowledges and agrees, without limitation, that each and all of the terms and provisions of Section 6.1 of the Indenture have been and are incorporated into this Deed of Trust by reference to the same extent as though fully set out herein and that the term Event of Default wherever used in this Deed of Trust shall mean either an Event of Default as defined in Section 6.1 of the Indenture or the failure of the Company to comply with any covenant, agreement or warranty contained in this Deed of Trust within 30 days after such failure shall first become actually known to the Company.

4.2. *Remedies.* When any Event of Default has occurred and is continuing, the Trustees or either of them may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein or in the Indenture conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

(a) The Beneficiary may declare the entire unpaid balance of the Notes to be immediately due and payable in the manner provided in the Indenture;

(b) The Beneficiary personally or by agents or attorneys may enter into and take possession of all or any part of the Collateral, and may forthwith use, operate and manage the Collateral, exercise all rights, privileges and remedies of the Company under any or all of the Assigned Agreements, including, without limitation, the Facility Agreement, collect the earnings and income therefrom, pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements

and liabilities of the Company hereunder and apply the net proceeds arising from any such operation of the Collateral as provided in Section 4.3 hereof in respect of the proceeds of a sale of the Collateral. In furtherance of the remedies provided for in this Section 4.2, when any Event of Default has occurred and is continuing, the Beneficiary is hereby irrevocably appointed the true and lawful attorney-in-fact of the Company, in its name and stead or in the name of the Beneficiary, to make all advances, assignments, transfers and deliveries of all or any part of the Collateral, and for that purpose the Beneficiary may execute all necessary deeds and instruments of assignment and transfers, including, without limitation, all necessary deeds and instruments of assignments and transfer required to convey the "Facility", the "Conveyed Property" and the "Cars", as defined in the Facility Agreement, to SPS pursuant to Section 5 of the Facility Agreement, and may substitute one or more Persons with like power, the Company hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Company, if so requested in writing by the Beneficiary, shall ratify and confirm any such sale or sales by executing and delivering to the Beneficiary or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Beneficiary, for the purpose and as may be designated in such request. This power of attorney is coupled with an interest and shall be irrevocable so long as any of the Subject Indebtedness remains outstanding.

(c) The Trustees or either of them may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession and without instituting any legal proceedings whatsoever and having first given notice of such sale by certified mail to the Company once at least 21 days prior to the date of such sale, and any other notice which may be required by law, sell and dispose of said Collateral or any part thereof at public auction or private sale to the highest bidder, which may be the Beneficiary or any holder of any Note, in one lot as an entirety or in separate lots (the Company for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the property covered by the lien of this Deed of Trust marshalled), and either for cash or, to the extent permitted under applicable law, on credit and on such terms as the Beneficiary may determine and at any place (whether or not it be the location of the Collateral or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice. At any such sale, the Company hereby agrees, in its behalf and in behalf of its heirs, executors, administrators, successors, personal representatives and assigns, that any and all recitals made in any deed of conveyance given by Trustees, or either of them, with respect to the identity of Beneficiary, the occurrence or existence of any default, the acceleration of the maturity of any of the Subject Indebtedness, the request to sell, the notice of sale, the giving of notice to all debtors legally entitled thereto, the time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, or the due and proper appointment of a substitute Trust Deed Trustee, shall be taken by all courts of law and equity as prima facie evidence that the statements or recitals state facts and are without further question to be so accepted.

(d) The Beneficiary shall have all rights, powers, options and remedies of a secured party under the applicable Uniform Commercial Code with respect to any portion of the Collateral constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by such Uniform Commercial Code, including without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where such property may be found. Any requirement of said Code for reasonable notification shall be met by making written notice to the Company at its address above set forth at least ten days prior to the sale or other event for which such notice is required.

(e) The Trustees may proceed to protect and enforce their respective rights by a suit or suits in equity or at law, or for the specific performance of any covenant or agreement contained herein or in the Notes, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Deed of Trust, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Deed of Trust or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Company or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Company or the then value of the premises, to have a receiver appointed of all the Collateral and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer, and the Company does hereby irrevocably consent to such appointment.

(f) In case of any sale of the Collateral, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Deed of Trust, the Beneficiary may bid and become the purchaser, and the Beneficiary or the Purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to credit the Subject Indebtedness held by or on behalf of such Purchasers on the purchase price.

It is understood and agreed that all rights, remedies and powers provided by this Section 4 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the State of Texas and all provisions of this Section 4 are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. It is further understood and agreed that all rights, remedies and powers provided for in this Section 4 shall be subject to the provisions of Section 2.2 of the Indenture.

4.3. *Application of Proceeds.* The purchase money proceeds and/or avails of any sale of the Collateral, or any part thereof and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) *first*, to the payment pro rata of costs and expenses of foreclosure or suit, if any, and of such sale, and to the extent permitted by applicable law, the reasonable compensation of the Trustees, their agents, attorneys and counsel, and of all proper expenses, liability and advances incurred or made hereunder by the Trustees or either of them, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) *second*, to the payment of the amount then owing or unpaid on the Notes for principal, interest and prepayment premium, if any, in the manner provided in Section 6.4 of the Indenture; and

(c) *third*, to the payment of the surplus, if any, to the Company, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

4.4. *Waiver of Extension, Appraisement, Stay, Laws.* The Company will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension law whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Deed of Trust; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisement of the Collateral hereunder, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States of America or by any state or territory, or otherwise, to redeem the Property so sold or any part thereof; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefits or advantage of any such stay, extension, valuation or appraisement law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Trustees, or either of them, but to suffer and permit the execution of every power as though no such stay, extension, valuation or appraisement law or laws had been made or enacted.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming the property sold or any part thereof under, by or through the Company, its successors or assigns; *provided, however*, that nothing in this paragraph shall, as between the Company and the Secured Party, affect the entitlement of the Company to any payment of surplus proceeds under Section 4.3 of this Deed of Trust or Section 2.4 of the Indenture upon the sale of any of the Collateral.

4.5. *Effect of Discontinuance of Proceedings.* In case the Trustees or either of them shall have proceeded to enforce any right under this Deed of Trust by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then and in every such case the Company and the Trustees shall be restored to their position and rights

hereunder as they existed immediately prior to the commencement of such proceedings with respect to the property subject to the lien of this Deed of Trust. Upon the request of the Beneficiary, the Company will execute an appropriate reinstatement agreement confirming the foregoing.

**4.6. Delay or Omission Not a Waiver.** No delay or omission of the Trustees to exercise any right or power arising from any default on the part of the Company shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Trustees of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No remedy hereunder is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Deed of Trust operate to prejudice, waive or affect the security of this Deed of Trust or any rights, powers or remedies hereunder; nor shall the Trustees be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

**4.7. Remedies Subject to Provisions of Law.** All rights, remedies and powers provided by this Section 4 may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Section 4 are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Deed of Trust invalid or unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

**4.8. Tenancy at Will.** In the event of a trustee's sale hereunder and if at the time of such sale the Company or any other party occupies the portion of the Collateral so sold or any part thereof, such occupant shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Collateral so occupied, such rental to be due and payable daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of such Collateral.

## **SECTION 5. AMENDMENTS; WAIVERS.**

**5.1. Amendments and Waivers Without Holders' Consent.** The Company and the Beneficiary from time to time and at any time, subject to the restrictions in this Deed of Trust contained, may, without consent of the holders of the Notes, enter into a written instrument amending this Deed of Trust for any one or more or all of the following purposes:

(a) to add to the covenants and agreements to be observed by, and to surrender any right or power reserved to or conferred upon, the Company; or

(b) to subject to the Lien of this Deed of Trust additional Property hereafter acquired by the Company or others and intended to be subjected to the Lien of this Deed of Trust, and to correct or amplify the description of any Property subject to the Lien of this Deed of Trust;

No restriction or obligation imposed upon the Company may, except as otherwise provided in this Deed of Trust, be waived or modified by such written instruments, or otherwise.

5.2. *Amendments and Waivers With Holders' Consent.* Upon the waiver or consent of the holders of at least 66-2/3% in aggregate principal amount of the Notes at the time outstanding (a) the Company may take any action prohibited, or omit the taking of any action required, by any of the provisions of this Deed of Trust, or (b) the Company and the Beneficiary may enter into a written instrument amending this Deed of Trust for the purpose of adding, changing or eliminating any provisions of this Deed of Trust or modifying in any manner the rights and obligations of the holders of the Notes and the Company; provided that no such written instrument shall:

(i) impair or affect the right of any holder to receive payments or prepayments of the principal of and interest on its Note as therein and herein provided, without the consent of such holder,

(ii) permit the creation of any Lien prior to, or on a parity with, the Lien of this Deed of Trust with respect to any of the Collateral, without the consent of the holders of all the Notes at the time outstanding,

(iii) effect the deprivation of any holder of the Notes of the benefit of the Lien of this Deed of Trust upon all or any part of the Collateral without the consent of such holder of the Notes,

(iv) reduce the percentage of the aggregate principal amount of Notes the holders of which are required to waive any provision or consent to the taking of any such action or the execution of any written instrument pursuant to this Section, without the consent of the holders of all of the Notes at the time outstanding, or

(v) modify the rights, duties or immunities of the Trustees without their consent.

5.3 *Notice of Amendment or Waiver.* Promptly after the execution by the Company and the Beneficiary of any amendment or waiver pursuant to the provisions of Section 5.1 or 5.2 hereof, the Company shall give written notice, setting forth in general terms the substance of such amendment or waiver, together with a conformed copy thereof, mailed first class postage prepaid, to each holder of Notes at its address set forth in the Register. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment or waiver.

## SECTION 6. MISCELLANEOUS.

6.1. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Deed of Trust contained by or on behalf of the Company, or by or on behalf of the Trustees or either of them, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

**6.2. Severability.** The unenforceability or invalidity of any provision or provisions of this Deed of Trust shall not render any other provision or provisions herein contained unenforceable or invalid.

**6.3. No Assumption of Duties.** No provision of this Deed of Trust shall be construed to impose upon the Trustees or any assignee or successor of the Trustees, any duties, responsibilities or liabilities of the Company under any of the Assigned Agreements, all of which duties, responsibilities and liabilities are hereby declared to be expressly retained by the Company.

**6.4. Addresses for Notices and Demands.** All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Company:

Wheelabrator Energy Leasing Company  
Liberty Lane  
Hampton, New Hampshire 03842  
Attention: Chief Financial Officer

If to the Beneficiary:

The Connecticut Bank and Trust Company,  
National Association, Trustee  
One Constitution Plaza  
Hartford, Connecticut 06115  
Attention: Corporate Trust Department

or as to either party at such other address as any such party may designate by notice duly given in accordance with this Section 6.4 to the other parties.

**6.5. Headings and Table of Contents.** The headings of the sections and paragraphs of this Deed of Trust and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**6.6. Release of Deed of Trust and Collateral.** The Beneficiary shall release and discharge this Deed of Trust and the assignment and Lien hereof, at the Company's expense, by proper instrument or instruments upon presentation of satisfactory evidence that all Subject Indebtedness has been fully paid or discharged or that all conditions precedent to such release provided for in the Indenture have been fully complied with and the Beneficiary shall so release and discharge this Deed of Trust and the assignment and Lien thereof or any of the Collateral held hereunder to the extent and upon the terms and upon compliance with the conditions provided for in any written consent given thereto at any time or from time to time by the holder or holders of all of the then outstanding Notes.

**6.7. Substitution, Removal of Trust Deed Trustee.** The Beneficiary shall at any time and from time to time have the irrevocable right to remove the Trust Deed Trustee without notice or cause and to appoint a successor by an instrument in writing, duly acknowledged, and in the event of the death or resignation of the Trust Deed Trustee herein named, the Beneficiary shall have the right to appoint a successor

by such written instrument. Any Trust Deed Trustee so appointed shall be vested with the title to the Collateral, and shall possess all the powers, duties and obligations herein conferred on the Trust Deed Trustee in the same manner and to the same extent as though named herein as Trust Deed Trustee. The appointment of a successor Trust Deed Trustee may be executed by anyone acting in a representative capacity, and such appointment shall be conclusively presumed to have been executed with appropriate authority.

**6.8. Duties and Responsibilities of the Beneficiary.** The duties and responsibilities of the Beneficiary to the Noteholders, and the successors and assigns of the Noteholders, shall be as set forth in Section 7 of the Indenture.

**6.9. Limitation on Interest.** All agreements between the Company and the Beneficiary or the Purchasers, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand for payment of or acceleration of the maturity of any of the Subject Indebtedness or otherwise, shall the interest contracted for, charged or received by the Beneficiary or the Purchasers exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to the Beneficiary or the Purchasers in excess of the maximum lawful amount, the interest payable to the Beneficiary or the Purchasers shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance the Beneficiary or the Purchasers shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the principal balance of the Subject Indebtedness and not to the payment of interest or, if such excessive interest exceeds the unpaid balance of principal of the Subject Indebtedness, such excess shall be refunded to the Company. All interest paid or agreed to be paid to the Beneficiary or the Purchasers shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal of the Subject Indebtedness (including the period of any renewal or extension thereof) so that the interest thereon for such full period shall not exceed the maximum amount permitted by applicable law. This paragraph shall control all agreements between the Company and the Beneficiary or the Purchasers.

**6.10. Subrogation.** To the extent that proceeds of the Subject Indebtedness are used to pay any outstanding Lien affecting the Collateral, such proceeds have been advanced by the Beneficiary or the Purchasers at the Company's request, and the Beneficiary or the Purchasers, as the case may be, shall be subrogated to all rights, interests and Liens owned or held by any owner or holder of such outstanding Liens, irrespective of whether such Liens are released of record; *provided, however,* that the terms and provisions hereof shall govern the rights and remedies of the Beneficiary or the Purchasers and shall supersede the terms, provisions, rights, and remedies under the Lien or Liens to which the Beneficiary or the Purchasers are subrogated hereunder.

**6.11. Subordination to Facility Lease, Facility Agreement.** The parties hereto hereby agree that, irrespective of the order of recording or filing for record in any office of this Deed of Trust, the Facility Lease or the Facility Agreement, this Deed of Trust shall be subordinate and junior to the Facility Lease and the Facility Agreement.



6.12. *Governing Law.* This Deed of Trust shall be governed by and construed in accordance with the laws of the State of Texas.

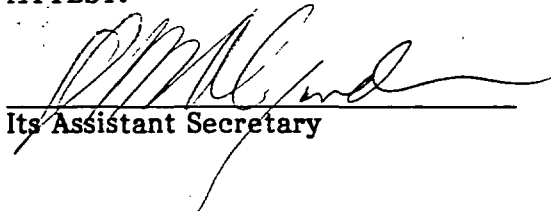
6.13. *Counterparts.* This Deed of Trust may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Deed of Trust.

IN WITNESS WHEREOF, the Company has caused this Deed of Trust to be executed in its behalf by its Vice President all as of the day and year above written but actually executed on October 28 1987.

WHEELABRATOR ENERGY LEASING  
COMPANY

(SEAL)

ATTEST:

  
Its Assistant Secretary

By   
Its Vice President

This instrument was prepared by:

Edward V. Sommer, Esq.  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603

STATE OF NEW HAMPSHIRE     )  
  )  
COUNTY OF ROCKINGHAM     )

This instrument was acknowledged before me on October 28, 1987, by David L. Schniitt and Dennis W. Alexander, the Vice President and Assistant Secretary, respectively, of Wheelabrator Energy Leasing Company, a Delaware corporation, on behalf of said corporation.

(SEAL)

Laurel A. McKenna  
Notary Public in and for  
the State of New Hampshire

My Commission Expires:

Print Name of Notary:

MY COMMISSION EXPIRES.  
9/11/90

Laurel A. McKenna

## LEGAL DESCRIPTION OF REAL PROPERTY

### I. FEE SIMPLE ESTATE IN THE FOLLOWING:

#### Inside Loop Track

A parcel of land out of Labors 9, 10 and 24, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 2899.35 feet north and 2492.64 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence North 30° 00' east, 1070.00 feet;

Thence north 60° west, 275.00 feet;

Thence north 32° east, 180.00 feet;

Thence north 50° west, 950.00 feet;

Thence south 40° west, 972.25 feet;

Thence south 14° west, 775.00 feet;

Thence south 73° 56' east, 1194.67 feet to the beginning point.

#### Outside Loop Track

A parcel of land out of Labors 9, 10, 23 and 24, League 236, Dallam County School Land Survey, Lamb County, Texas,

Beginning at a point 3090.00 feet north and 2622.36 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas;

Thence north 30° 00' east, 740.00 feet;

Thence south 60° 00' east, 100.00 feet;

Thence south 30° 00' west, 360.00 feet;

Thence south 60° 00' east, 435.00 feet;

Thence south, 300.00 feet;

Thence west, 150.00 feet;

Thence north, 60.00 feet;

Thence north, 70° 28' west, 534.00 feet to the beginning point.

Dumper Building Parcel

A parcel of land out of Labors 9 and 10, League 236, Dallam County School Land Survey, Lamb County, Texas, the center point of which is located at a point 3360.58 feet north and 2768.75 feet east of the southwest corner of Labor 24, League 236, Dallam County School Land Survey, Lamb County, Texas. From the center point such parcel of land extends 8.50 feet either side of a centerline at north 30° east extending a distance of 125.00 feet.

- II. THE EASEMENT AND LICENSE interests created by that certain Easement and License Agreement dated as of December 31, 1981 between Southwestern Public Service Company and Wheelabrator Coal Services Company recorded in the records of Lamb County, Texas.
- III. THE EASEMENT interest created by that certain Unit 2 Easement dated as of May 13, 1985 between Southwestern Public Service Company and Wheelabrator Coal Services Company, recorded in the records of Lamb County, Texas.

## DESCRIPTION OF FACILITY

The improvements and equipment required to unload, handle, process, and convey coal to SPS's Tolk Station Units No. 1 and No. 2 (the trippers, connecting conveyor and other equipment to be constructed later to service Unit No. 2 will be a part of the Facility when installed) all spare parts, all required permits and approvals of which SPS has knowledge, utility connections and services, fencing, all as are necessary to enable Operator to own and operate the Facility and to meet its obligations to TUCO pursuant to the Coal Service Agreement and to SPS pursuant to the Conditional Coal Service Agreement and to enable TUCO to perform its obligations to SPS pursuant to the Coal Supply Agreement.